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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,008	03/05/2002	Alexander Kamyshny	1268-154	4395

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EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/090,008

Applicant(s)

KAMYSHNY ET AL

Examiner

Lyle A Alexander

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1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-21,23-26,28-41,43-45 and 47-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-7,9-21,23-26,28-41,43-45 and 47-50 is/are allowed.
- 6) ☒ Claim(s) 51-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael in view of Van Lente et al.

Michael teaches diagnostics beads for indication of occult blood in animal litter. Column 2 lines 1+ teach the beads can be made of cellulose. Column 2 lines 46-60 teach the beads may have a diameter between 1 to 40 mm and may comprise from 1-100% of the litter. Column 4 lines 40+ teach TMB as the indicator, polyvinyl pyrrolidone (PVP) as the binder and cumene hydroperoxide.

Michael is silent to the claimed antioxidant such as BHT.

Van Lente et al. teach in columns 3-4 lines 65-6 "...the color change of occult blood indicators such as tetramethylbenzidine (3,3',5,5', tetramethylbenzidine) fade over time, it is desirable that the system have preservatives such as BHT to preclude unwanted color change before exposure to blood/urine mixtures. This will allow the color to last at least for an 8-hour period. This gives the pet owner sufficient time to notice the color change in the kitty litter box. Butylated hydroxytoluene (BHT) can be a suitable preservative.

It would have been within the skill of the art to modify Michael in view of Van Lente et al. and use BHT in the composition to gain the above advantages.

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Michael is silent to perlite.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well-known results.

The choice of well known inert material, such as perlite, is a result effective variables with the known and expected result of creating a non-reactive substrate upon which the reagent is placed. Additionally, perlite is readily available and inexpensive. It would have been within the skill of the art to modify Michael to use perlite as optimization of a result effective variable and to gain the above advantages.

***Allowable Subject Matter***

Claims 1-2,4-7,9-21,23-26, 28-41,43-45 and 47-50 are allowed.

The following is an examiner's statement of reasons for allowance: In addition to the remarks of record, the cited prior art fails to teach or anticipate the claimed use of ascorbic acid.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

Applicant's arguments filed 11/29/04 have been fully considered but they are not persuasive.

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The Office and Applicants' are in agreement as to the status of claims 1-2,4-7,9-21,23-26, 28-41,43-45 and 47-50 being in condition for allowance.

The only remaining issue is the status of new claims 51-56. The Office has rejected these claims over the rejection the previous rejections of record as anticipated by Applicants'. Applicants' argued the above rejection fails to teach use of "granule-like particles" having a diameter of 2-5 mm. The claimed granule-like particles is not specific to any shape and has been read as a small particle which has been properly read on the prior art. The cited art is acknowledged as teaching particle in the range of 1-40mm. The claimed 2-5 mm size range is encompassed by the taught 1-40 mm size range.

Applicants' acknowledge on page14 line 3 of their 11/29/04 remarks that Michael teaches sphere shaped particles. Applicants' further state in lines 9-12 Michael teaches flat substrates and does not teach the claimed bead structure that Applicants' describe as a "spherical body". It appears Applicants' are contradicting themselves because they characterize Michael as teaching sphere shaped particles and then later state Michael does not teach a "spherical body". The Office maintains Michael teaches spherical shape particles that are indistinguishable from the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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